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11
12 UNITED STATES DISTRICT COURT
13 DISTRICT OF NEVADA

14 UNITED STATES OF AMERICA,)	Case No: 2:09-CR-00022-RCJ-RJJ
)	
15 Plaintiff,)	GOVERNMENT'S MOTION FOR LEAVE
)	AND SUR-REPLY REGARDING
16 v.)	DEFENDANTS' MOTION FOR
)	DISCOVERY
17)	
18)	
19 ALAN L. RODRIGUES, et al.,)	
)	
20 Defendants.)	
)	

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22 The United States of America, by and through Daniel G. Bogden, United States Attorney, and
23 Jay R. Nanavati and Timothy J. Stockwell, Department of Justice Trial Attorneys, respectfully
24 requests leave from the court to file this sur-reply to clarify an important issue raised by the
25 defendants in their Defendants' Joint Reply to Government's Response to Motion for Discovery
26 (Document No. 98).

27 In their reply the defendants state that it is the government's position that the audit files of
28 NADN customers are not in the possession of the government but rather a third party, the "Civil
Division" of the Department of Justice, Tax Division. The government seeks to clarify, to prevent

1 any confusion, that the audit files are in the possession of the civil side of the Internal Revenue
2 Service ("IRS"), not the civil side of the Department of Justice, Tax Division. The Department of
3 Justice, Tax Division, consists of three sections: the Civil Trial Section, the Criminal Enforcement
4 Section, and the Appellate Section. The prosecutors assigned to this case work for the Criminal
5 Enforcement Section. The Tax Division's "Civil Division" referenced by the defendants is the Civil
6 Trial Section that was responsible for the civil lawsuit against NADN and certain principals and
7 employees seeking injunctive relief. The IRS, however, is a bureau of the Department of Treasury,
8 and consists of numerous operating divisions, including Small Business/Self Employed, Wage and
9 Investment, Large and Mid-Size Business, Tax Exempt and Government Entities, and Criminal
10 Investigation. Criminal Investigation is the only division responsible for criminal investigations and
11 is part of the prosecution team in this case. The other divisions are what the government refers to as
12 the "civil side" of the IRS.

13 As stated in the government's response, it is the government's position that although the
14 government has been willing to facilitate production of certain tax information in the possession of
15 the IRS, the civil side of the IRS is not part of the prosecution team, and their audit files and other tax
16 information is not within the possession of the government. Indeed, disclosure of this type of
17 information is protected by the requirements of 26 U.S.C. § 6103. Therefore, even if the defendants
18 were to establish that the audit files are material or exculpatory, the government has no obligation to
19 produce these under Rule 16 or *Brady*.

20 Finally, as is customary in criminal cases, the United States has referred to itself in this case as
21 "the government." When the government has argued in this case that certain IRS materials are not in
22 its possession, it has used the name "the government" in the sense that it is used in *Brady* and its
23 progeny. That is, the government means "the prosecution team." Outside of the legal context, the
24 government is a term that can be used to refer to the entire federal government, state governments, or
25 local governments. In the *Brady* context, it is a term of art that is synonymous with the expression
26 "the prosecution team." This is the sense in which the United States has used and will continue to use
27 the term.

28

1 DATED this 10th day of May, 2010.

2 Respectfully submitted,

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7 NICHOLAS D. DICKINSON
8 Assistant United States Attorney

9 s/ Jay Nanavati and Timothy Stockwell
10 JAY R. NANAVATI
11 TIMOTHY J. STOCKWELL
12 Trial Attorneys

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15 **CERTIFICATE OF ELECTRONIC SERVICE**

16 This is to certify that on May 10, 2010, the undersigned served counsel for Defendants Alan
17 Rodrigues, Weston Coolidge, and Joseph Prokop, with the foregoing by means of electronic filing.

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19
20 s/ Jay Nanavati and Timothy Stockwell
21 JAY R. NANAVATI
22 TIMOTHY J. STOCKWELL
23 Trial Attorneys
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